

**United States Department of Labor  
Employees' Compensation Appeals Board**

<b>J.P., Appellant</b>  <b>and</b>  <b>DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Brockton, MA, Employer</b>	) ) ) ) ) ) ) ) ) ) )	<b>Docket No. 15-1717 Issued: December 11, 2015</b>
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<i>Appearances:</i> <i>Appellant, pro se</i> <i>Office of Solicitor, for the Director</i>	<i>Case Submitted on the Record</i>
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**DECISION AND ORDER**

Before:  
 CHRISTOPHER J. GODFREY, Chief Judge  
 PATRICIA H. FITZGERALD, Deputy Chief Judge  
 VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 17, 2015 appellant filed a timely appeal from an August 3, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he developed an emotional condition in the performance of duty.

**FACTUAL HISTORY**

On March 12, 2015 appellant, then a 55-year-old accounting technician, filed an occupational disease claim (Form CA-2) alleging that he developed severe stress because his

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

supervisor, Deborah Purvis, was pressuring him to write statements against his Chief, Li Liu. He stated that this continued for a while and Ms. Purvis became very aggressive with him when she realized he was not willing to cooperate. Appellant first became aware of his condition and of its relationship to his employment on October 17, 2014. He first sought medical treatment on January 15, 2015 and notified supervisor, Warren Berger, of his condition on March 30, 2015. On the reverse side of the claim form, Mr. Berger stated that appellant was moved to another office to separate him from another employee.

In hospital reports dated January 15 and 16, 2015, Dr. Sarah C. Grudberg, Board-certified in internal medicine, reported that appellant presented to the cardiology clinic after complaints of chest pain and dizziness which lasted at least eight hours. Appellant reported burning and pressure-like chest pain at rest one month prior when he presented to the emergency room and was told the condition was noncardiac. He also noted a history of similar chest pains while in Iraq, which he attributed to anxiety. Dr. Grudberg diagnosed obesity, post-traumatic stress disorder, and sinus bradycardia. In a January 16, 2015 report, she diagnosed noncardiac chest pain and recommended that appellant explore potential emotional stressors which were driving his symptoms. Appellant reported significant stress at times which he did not believe were related to his symptoms.

By letter dated May 11, 2015, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and afforded him 30 days to respond to the provided questions. OWCP requested that he describe in detail the employment-related activities which he believed contributed to his condition, details pertaining to aggressive behavior from Ms. Purvis, relevant dates, locations, how often and how long the events occurred, signed witness statements from anyone who could verify the allegations made, whether he had filed previous grievances or Equal Employment Opportunity complaints, relevant documents, sources of stress outside of his federal employment, details pertaining to any prior emotional conditions, medical care, the development of the claimed condition, when he first experienced his cardiac symptoms, any activities he was performing prior to the onset of his symptoms, and any treatment pertaining to his claimed condition. By letter of the same date, it requested additional information from the employing establishment.

In a June 8, 2015 report, William Hyman, a clinical nurse specialist, reported that he prescribed appellant psychiatric medications after he presented on February 25, 2015 with a chief complaint of, "I just can't deal with my supervisor." Nurse Hyman diagnosed a panic disorder, noting that appellant had 11 out of 13 symptoms of a panic attack. He further noted that appellant would become extremely anxious when he would look at his supervisor, found it to be intolerable to be in the same room with her, and requested a note restricting him from being in the same room with her.

By letter dated June 9, 2015, the employing establishment controverted the claim, stating that appellant failed to establish fact of injury. It further stated that he had a history of the same type of chest pain from when he served in Iraq and failed to establish that his condition was causally related to factors of his employment. In support of its controversion, OWCP submitted a narrative statement from Mr. Berger responding to OWCP's questionnaire.

In a June 9, 2015 narrative statement, Mr. Berger reported that Ms. Purvis was appellant's direct supervisor and the only knowledge he had of conflicts between appellant and Ms. Purvis were based on statements made by appellant that she was creating a hostile work environment for him, did not like him, and failed to respond to his e-mails in a timely manner. He noted knowledge of one incident involving appellant and Ms. Purvis when appellant was assisting a traveler and she questioned why the traveler was in the office. Appellant informed him that traveler felt that Ms. Purvis' tone was not appropriate. Mr. Berger did not directly witness this interaction. He further stated that appellant was moved to another office due to an altercation he had with another fellow employee. Mr. Berger stated that to the best of his knowledge he did not know of any other accommodations made to reduce appellant's stress.

By decision dated August 3, 2015, OWCP denied appellant's claim finding that he failed to establish fact of injury because the evidence did not support that the occupational exposure occurred as alleged. It noted that the circumstances he claimed were responsible for his condition were unclear and vague and he failed to respond to OWCP's questionnaire. OWCP also found that appellant failed to establish a firm medical diagnosis which could be reasonably attributed to the alleged occupational exposure.

### **LEGAL PRECEDENT**

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>2</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable, and probative evidence.<sup>3</sup>

Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of FECA.<sup>4</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of FECA.<sup>5</sup>

The Board has held that the manner in which a supervisor exercises his or her discretion falls outside the coverage of FECA. This principle recognizes that a supervisor or manager must be allowed to perform their duties and that employees will, at times, disagree with actions taken.

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<sup>2</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>3</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> *Id.*

Mere disagreement with or dislike of actions taken by a supervisor or manager will not be compensable absent evidence establishing error or abuse.<sup>6</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.<sup>7</sup> Mere perceptions of harassment or discrimination are not compensable under FECA.<sup>8</sup> A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.<sup>9</sup> Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.<sup>10</sup> A claimant must establish a factual basis for his or her allegations of harassment or discrimination with probative and reliable evidence.<sup>11</sup>

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>12</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.<sup>13</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>14</sup>

### ANALYSIS

Appellant has not attributed his emotional condition to the performance of his regular work duties or to any special work requirement arising from his employment duties under *Cutler*.<sup>15</sup> He alleged that he sustained an emotional condition as a result of Ms. Purvis pressuring him to write statements against Chief Liu and that she displayed increasing aggression towards

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<sup>6</sup> *S.M.*, Docket No. 09-2290 (issued July 12, 2010); *Linda J. Edwards-Delgado*, 55 ECAB 401 (2004).

<sup>7</sup> *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

<sup>8</sup> *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>9</sup> *J.F.*, 59 ECAB 331 (2008); *Robert Breeden*, *supra* note 7.

<sup>10</sup> *G.S.*, Docket No. 09-764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

<sup>11</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>12</sup> *D.L.*, 58 ECAB 217 (2006).

<sup>13</sup> *K.W.*, *supra* note 7; *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

<sup>14</sup> *Robert Breeden*, *supra* note 7.

<sup>15</sup> *Supra* note 4.

him when he would not comply. OWCP denied his emotional condition claim as he did not establish that any compensable factors of employment occurred. The Board affirms this finding.

A claimant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.<sup>16</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected a condition for which compensation is claimed.<sup>17</sup>

Appellant has not provided sufficient detail to establish compensable work factors.<sup>18</sup> The Board notes that his allegation regarding his supervisor's request for a statement against Chief Liu is vague and fails to provide any detail regarding the date of the alleged request, or the actual nature of what appellant was requested to do. Similarly, appellant's allegation that his supervisor acted with increasing aggression is vague and lacking in detail. By letter dated May 11, 2015, OWCP requested he describe the factual circumstances of his claim and provided him with a questionnaire for completion. Appellant did not respond. The only explanation provided pertaining to his employment duties was the generalized and vague statement noted on his CA-2 form. Moreover, the employing establishment controverted the claim. By failing to describe his employment duties and circumstances surrounding his alleged injury, appellant has not established that the occupational exposure occurred as alleged.<sup>19</sup>

The Board notes that actions of a claimant's supervisor, which the claimant characterizes as harassment, may constitute a compensable factor of employment. However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions or feelings of harassment do not constitute a compensable factor of employment.<sup>20</sup> However, appellant failed to provide any details pertaining to the factors alleged. While Mr. Berger's statement added some details to his claim, noting an incident involving a traveler, it also fails to establish his occupational exposure claim as he failed to witness any of the incidents first hand.<sup>21</sup> The Board finds that appellant has failed to establish that he was subjected to harassment by the employing establishment.

As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record.<sup>22</sup>

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<sup>16</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>17</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>18</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>19</sup> *P.T.*, Docket No. 14-598 (issued August 5, 2014).

<sup>20</sup> *J.C.*, 58 ECAB 594 (2007); *Robert G. Burns*, *supra* note 8; *Lorraine E. Schroeder*, 44 ECAB 323 (1992).

<sup>21</sup> *See Robert J. Vitello*, Docket No. 01-318 (issued January 3, 2002).

<sup>22</sup> *Margaret S. Krzycki*, 43 ECAB 496 (1992).

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an emotional condition in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated August 3, 2015 is affirmed.

Issued: December 11, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board